

REMARKS

Pending Claims

Claims 1-16 are currently pending.

Rejections under 35 U.S.C. § 102

The Examiner has rejected claims 1, 3-6, 8-10, and 13-16 under 35 U.S.C. § 102(e) as being anticipated by Rudrapatna (US Appl. Publ. No. 2004/0092233). However, at least for the reasons presented herein, Applicants respectfully submit that the rejection is traversed. In responding to the rejections, Applicants make no concession that any of the cited references are prior art, and Applicants reserve the right to antedate any reference at a later date and to present additional reasons why the claims are patentable.

The Examiner has failed to make a *prima facie* case for anticipation under Section 102 because the cited Rudrapatna reference does not disclose all of the elements of the claims. Among other features, Rudrapatna fails to disclose “a transmission rate determining part for determining a transmission rate in accordance with a size of transmission data to the mobile station,” or equivalent language, as recited in claims 1, 6, 10, and 16.

While the portions of the Rudrapatna reference cited by the Examiner may address rates of transmission, nowhere in this reference is there a discussion of transmission rates being determined in accordance with a size of transmission data as recited in the claims.

As for claims 3 and 13, Rudrapatna fails to disclose “attaching rate information specifying a transmission rate by each transmission frame in accordance with the transmission data size” as claimed. As pointed out above, Rudrapatna does not disclose specifying transmission rates in accordance with transmission data size.

As for claim 4, Rudrapatna fails to disclose a mobile station having a transmission rate determining part “for estimating a transmission rate from a power distribution of a received signal.” Paragraph 0032 of Rudrapatna states that when “power control rate commands are not used to explicitly communicate rate changes, WTU 16 includes blind rate detection circuitry to dynamically extract the variable PC [power control] command rate.” However, Rudrapatna does not disclose that dynamically extracting the power control command is from a power distribution of a received signal as claimed.

For similar reasons, Rudrapatna fails to disclose the elements of claim 14.

Each of the remaining claims depends from an allowable claim and should be allowed for the same reasons that the respective parent claim is allowable, and also because each recites additional patentable subject matter.

Rejections under 35 U.S.C. § 103

The Examiner has rejected claims 2, 7, 11, and 12 as obvious over Rudrapatna in view of Guo (US Appl. Publ. No. 2006/0002338). However, at least for the reasons presented herein, Applicants respectfully submit that the rejection is traversed. In responding to the rejections, Applicants make no concession that any of the cited references are prior art, and Applicants reserve the right to antedate any reference at a later date and to present additional reasons why the claims are patentable.

Guo does not teach or suggest reducing the transmission power when the transmission rate is large and increasing the transmission power when the transmission rate is small. Guo in fact teaches the opposite, teaching that power is increased when transmission rate increases: "In a CDMA network, when a transition from low rate transmission (for voice and control) to transmission at a high rate (e.g. 2 Mb/s) occurs, the overall power increase can be of the order of 10 to 25 dB, for example." Guo, para. 0056. Indeed, Guo emphasizes "[a] higher transmission rate therefore typically requires a greater transmission power to be used in order to overcome the increase in error rate." Guo, para. 0009. Hence, Guo teaches away from reducing transmission power when the transmission rate is large.

Thus, not only does Guo fail to teach the elements of the claims, Guo teaches away from claims 2, 7, and 11. Therefore, Guo fails to supply the deficiencies of Rudrapatna and hence the combination of Rudrapatna in view of Guo is not obvious. In addition, Guo teaches away from the claims, further indicating that the claims are not obvious.

As for claim 12, Guo does not teach a lookup table that shows the relations among the transmission data size, the error correction gain difference, and a change amount of the transmission power. In particular, the brief mention in Guo of lookup tables does not teach including a lookup table that includes information about transmission data size. Guo fails to supply the deficiencies of Rudrapatna and therefore claim 12 is not obvious in view of the combined references.

CONCLUSION

In view of the remarks and amendments presented herein, reconsideration and withdrawal of the pending rejections and allowance of the claims are respectfully requested. The Examiner is strongly encouraged to contact the undersigned at the phone number below should any issues remain with respect to the application.

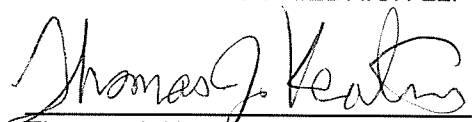
No other fees are believed due in connection with this submission. However, if additional fees are owed, please charge Deposit Account 50-1965.

Respectfully submitted,

MICHAEL BEST & FRIEDRICH LLP

Dated: April 25, 2008

By:

A handwritten signature in black ink, appearing to read "Thomas J. Keating", is written over a horizontal line.

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